

§ 2424.31

the parties' negotiated grievance procedure and, where the exclusive representative pursues either of these courses, proceed in accord with paragraph (a) of this section. If the exclusive representative does not file an unfair labor practice charge or grievance, the Authority will proceed to resolve all disputes necessary for disposition of the petition unless, in its discretion, the Authority determines that resolving all disputes is not appropriate because, for example, resolution of the bargaining obligation dispute under this part would unduly delay resolution of the negotiability dispute, or the procedures in another, available administrative forum are better suited to resolve the bargaining obligation dispute.

§ 2424.31 Resolution of disputed issues of material fact; hearings.

When necessary to resolve disputed issues of material fact in a negotiability or bargaining obligation dispute, or when it would otherwise aid in decision making, the Authority, or its designated representative, may, as appropriate:

- (a) Direct the parties to provide specific documentary evidence;
- (b) Direct the parties to provide answers to specific factual questions;
- (c) Refer the matter to a hearing pursuant to 5 U.S.C. 7117(b)(3) and/or (c)(5); or
- (d) Take any other appropriate action.

§ 2424.32 Parties' responsibilities; failure to raise, support, and/or respond to arguments; failure to participate in conferences and/or respond to Authority orders.

(a) *Responsibilities of the exclusive representative.* The exclusive representative has the burden of raising and supporting arguments that the proposal or provision is within the duty to bargain, within the duty to bargain at the agency's election, or not contrary to law, respectively, and, where applicable, why severance is appropriate.

(b) *Responsibilities of the agency.* The agency has the burden of raising and supporting arguments that the proposal or provision is outside the duty to bargain or contrary to law, respec-

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tively, and, where applicable, why severance is not appropriate.

(c) *Failure to raise, support, and respond to arguments.* (1) Failure to raise and support an argument will, where appropriate, be deemed a waiver of such argument. Absent good cause:

(i) Arguments that could have been but were not raised by an exclusive representative in the petition for review, or made in its response to the agency's statement of position, may not be made in this or any other proceeding; and

(ii) Arguments that could have been but were not raised by an agency in the statement of position, or made in its reply to the exclusive representative's response, may not be raised in this or any other proceeding.

(2) Failure to respond to an argument or assertion raised by the other party will, where appropriate, be deemed a concession to such argument or assertion.

(d) *Failure to participate in conferences; failure to respond to Authority orders.* Where a party fails to participate in a post-petition conference pursuant to § 2424.23, a direction or proceeding under § 2424.31, or otherwise fails to provide timely or responsive information pursuant to an Authority order, including an Authority procedural order directing the correction of technical deficiencies in filing, the Authority may, in addition to those actions set forth in paragraph (c) of this section, take any other action that, in the Authority's discretion, is deemed appropriate, including dismissal of the petition for review, with or without prejudice to the exclusive representative's refiling of the petition for review, and granting the petition for review and directing bargaining and/or rescission of an agency head disapproval under 5 U.S.C. 7114(c), with or without conditions.

§§ 2424.33-2424.39 [Reserved]

Subpart E—Decision and Order

§ 2424.40 Authority decision and order.

(a) *Issuance.* Subject to the requirements of this part, the Authority will expedite proceedings under this part to the extent practicable and will issue to